



## Termination of the Parent-Child Relationship

9/24/2019

In **Matter of J.C.**, 134 N.E.3d 419 (Ind. Ct. App. 2019) *trans. granted in part*, the Court of Appeals affirmed the order of the trial court terminating Mother's parental rights, and held that the admission of Mother's drug screen results was harmless, and there is sufficient evidence to support the trial court's termination order. The Court of Appeals also held that Mother had waived the statutory time limit of 180 days between the filing and hearing for termination. However, transfer was granted as to the matter of the statutorily required 180-day time limit between the filing of the termination petition and the completion of the termination hearing; the Indiana Supreme Court's opinion on this matter can be found at **Matter of J.C.**, 142 N.E.3d 427 (Ind. 2020).

J.C. and R.C. (the "Children") were removed from Mother's home in May 2016 after she overdosed on prescription medication and was found unresponsive in her home. After the Children were deemed to be CHINS, Mother was ordered to participate in a number of services including therapy and submitting to random drug screens. The permanency plan was initially reunification of the Mother with the Children. Mother had difficulty complying with the services and home-based services were closed as unsuccessful. Mother also frequently failed to appear for visitation with the Children. Many of Mother's problems were related to her continued use of illicit drugs and she failed to appear for many drug screens. Mother was arrested twice in 2018 and was ultimately sentenced to six years, three years home detention and three years probation. In March 2018, DCS filed petitions to terminate Mother's rights as to the Children. The hearings were initially set for the Fall of 2018 but got continued numerous times. Mother moved for a dismissal reasoning that the trial court had failed to conclude the termination hearings within the statutorily mandated timeframe of 180 days. The trial court denied Mother's motion. A final hearing was held on November 26, 2018 and on January 14, 2019 the trial court entered an order terminating Mother's parental rights. Mother appealed arguing the trial court improperly denied her motion for dismissal of the termination petition, the trial court abused its discretion in submitting her drug tests as evidence, and that the termination orders were not supported by sufficient evidence.

**The trial court did not abuse its discretion when it allowed DCS to submit Mother's drug screens to evidence. Id. at 429.** Mother claimed that her drug tests results constituted inadmissible hearsay. *Id.* at 428. The Court notes that Mother is incorrect in this claim and, even if she were correct, not all errors are reversible. *Id.* The Court noted the Business Record Exception to the Hearsay Rule, found at Ind. Evid. R. 803(6), which provides that certain regular kept records of a business are admissible if they meet the foundational requirements. *Id.* at 429. Mother cited prior case law holding that drug tests were not admissible as business records under

the Business Record Exception. Id., citing In re L.S., 125 N.E.3d 628 (Ind. Ct. App. 2019). Mother argued that the same was true here; with little discussion, the Court dismissed Mother's argument. Id. at 429. Some errors can be considered harmless where the judgment of the trial court is supported by independent evidence and where it is unlikely the evidence in question contributed to the judgment. Id. The drug tests show that Mother tested positive for cocaine and marijuana a total of four times. Id. However, at previous hearings Mother had admitted to her substance abuse problems. Id. Furthermore, the Court reasoned that Mother should have participated in 200 screens but in reality, only showed for less than half of that amount. Id. It was reasonable to assume on the missed screens, she would have tested positive for illicit drugs. Id. She was also convicted of possessing cocaine. Id. Because of the overwhelming amount of evidence regarding her use of illegal drugs, the admission of four positive drug screens did not significantly impair her rights. Id.

**The trial court did not err in finding that the conditions that led to the removal of the Children were not likely to be remedied. Id. at 432.** Mother argues that the trial court erroneously found that the reasons for removal would not be remedied. Id. at 431. IC 35-32-2-4(b)(2) provides the required elements for a petition to terminate parental rights; it provides that one of a number of three situations must be present. Most relevant in this case is IC 35-32-2-4(b)(2)(B)(i), which states, "there is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied." It must also be shown that the termination would be in the best interests of the child and that a care plan is set in place for the child. Id. DCS must prove these elements by clear and convincing evidence. Id. at 430. Mother did not challenge any of the trial court's findings, and therefore, they were accepted by the Court; among other things, the trial court noted that Mother had nearly 2 ½ years to remedy the reasons for removal and yet had made little progress during that time. Id. at 430-32. The Court notes that the trial court's findings of fact clearly establish Mother's substance abuse problem that she has struggled with since her teenage years. Id. at 432. Furthermore, despite the implementation of services, Mother failed drug screens and was arrested for possession of cocaine during the pendency of the CHINS action. Id.

**The trial court properly concluded that the termination of Mother's rights was in the best interest of the Children.** Mother also argued that the trial court erroneously found termination of her rights to be in the best interest of the Children. Id. at 432. When determining the best interests of a child, the Court must look at the totality of the evidence, placing the children's needs above that of the parent. Id. at 433. This evidence can include testimony from an advocate for the child. Id. In this case, the guardian ad litem and case manager both testified that Mother had failed to successfully complete any services or create a stable living environment for over two years. Id. Both testified that this would allow the Children permanency in their lives after being in the foster care system for two years. Id. The testimony, combined with the evidence of Mother's drug use was sufficient to establish that removal was in the best interests of the Children. Id.

**Transfer was granted as to the matter of the 180-day time limit between the filing of the termination petition and the completion of the termination hearing; the Indiana Supreme Court's opinion on this matter can be found at Matter of J.C., 142 N.E.3d 427 (Ind. 2020).**